

**Exhibit F**  
**Excerpts from Dec. 10, 2023**  
**Dep. of N. Farley**

THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF MISSOURI  
EASTERN DISTRICT

TNT AMUSEMENTS, INC. dba )  
PLAY-MOR COIN-OP, )  
 )  
Plaintiff, )  
 )  
vs. ) Case No.  
 ) 4:23-cv-00330-JAR  
TORCH ELECTRONICS, LLC; )  
et al., )  
 )  
Defendants. )  
----- )

DEPOSITION OF NICOLA FARLEY  
Taken on Tuesday, December 12, 2023  
By a Certified Court Reporter  
and Legal Videographer  
At 9:07 a.m.  
At 6375 South Pecos Road, Suite 103  
Las Vegas, Nevada

Reported by: Suzanne M. Stone, CCR 970, RPR

1 Q. Second, I'm going to try to make my  
2 questions clear, but if there's a question that you  
3 don't understand, I'd appreciate if you'd ask for a  
4 clarification, or if you just need the court  
5 reporter to read the question back, that's also  
6 possible.

7 A. Okay.

8 Q. And if I do ask a question and you give  
9 an answer, I'm going to presume that you understood  
10 the question. So can we agree that if you answer a  
11 question, you believe at least you understood what I  
12 was asking?

13 A. Yes.

14 Q. Okay. So before we get too much further  
15 in, can you tell me a little bit about your  
16 educational background?

17 A. Certainly. I have a Bachelor of  
18 Engineering degree in electrical engineering and  
19 computer science from Stevens Institute of  
20 Technology in Hoboken, New Jersey.

21 Q. Okay. And I know that today you are  
22 affiliated with -- with Nick Farley & Associates; is  
23 that correct?

24 A. Yes.

25 Q. And how long have you been affiliated

1 with that entity?

2 A. I founded Nick Farley & Associates in  
3 November of -- November of 2000, so 23 years.

4 Q. Okay. And what did you do before  
5 starting Nick Farley & Associates?

6 A. Prior to Nick Farley & Associates, I was  
7 employed by another independent testing laboratory,  
8 Gaming Laboratories International, or GLI, as  
9 they're more commonly known. I had worked there for  
10 nine years. And prior to GLI, I worked for the  
11 New Jersey Division of Gaming Enforcement in  
12 Atlantic City for four years.

13 Q. What was your title with the New Jersey  
14 Division of Gaming Enforcement?

15 A. I want to recall test engineer.

16 Q. Okay. And what was your job function?  
17 What did you do?

18 A. Tested and evaluated electronic gaming  
19 devices and systems for use in Atlantic City  
20 casinos.

21 Q. And when you say "tested" them, how would  
22 you go about doing that? Would you go to the  
23 casinos? Would you do forensic examinations at a  
24 lab? How would you do your job?

25 A. All -- all the examinations were

1 performed in a lab. We had a lab in Atlantic City,  
2 and manufacturers would submit their devices to us  
3 for testing. And we would test them in the lab for  
4 compliance with the New Jersey requirements.

5 Q. And I don't need you to give me all of  
6 the New Jersey -- New Jersey requirements, but what  
7 are some examples of the sort of things you might  
8 have been testing to make sure the machines did work  
9 properly?

10 A. Well, random number generator analysis  
11 was one thing that we did. We verified that all the  
12 prizes paid accurately, all the meters incremented  
13 correctly, and the games functioned as designed.

14 Q. And how does one go about performing  
15 those tests? What sort of things does one do?

16 A. Well, collection of -- the RNG analysis  
17 involved the collection of data from -- from the  
18 device. We would work with the manufacturer to get  
19 a program put together so that we can collect that  
20 data and analyze it. Pay verification involved  
21 using in-circuit emulators so that we could control  
22 the software and set break points so that the -- we  
23 can tell the machine where we wanted the reels to  
24 stop, and then, you know, verify that the prizes  
25 paid correctly.

1 Q. Second, I'm going to try to make my  
2 questions clear, but if there's a question that you  
3 don't understand, I'd appreciate if you'd ask for a  
4 clarification, or if you just need the court  
5 reporter to read the question back, that's also  
6 possible.

7 A. Okay.

8 Q. And if I do ask a question and you give  
9 an answer, I'm going to presume that you understood  
10 the question. So can we agree that if you answer a  
11 question, you believe at least you understood what I  
12 was asking?

13 A. Yes.

14 Q. Okay. So before we get too much further  
15 in, can you tell me a little bit about your  
16 educational background?

17 A. Certainly. I have a Bachelor of  
18 Engineering degree in electrical engineering and  
19 computer science from Stevens Institute of  
20 Technology in Hoboken, New Jersey.

21 Q. Okay. And I know that today you are  
22 affiliated with -- with Nick Farley & Associates; is  
23 that correct?

24 A. Yes.

25 Q. And how long have you been affiliated

1 casino opening.

2 Q. Okay. But -- but in general, most of  
3 your work at the Division of Gaming Enforcement was  
4 in the lab?

5 A. Yes.

6 Q. Is it -- you -- you've mentioned that in  
7 the context of GLI, you did some onsite visits. Was  
8 that the majority of your work at GLI, or was it a  
9 majority lab work at GLI, as well?

10 A. It was mixed, yes. I did both, lab work  
11 and field work.

12 Q. Okay. So let's talk about the lab work  
13 for a moment. We talked about a few things that you  
14 did at the New Jersey Division of Gaming Enforcement  
15 with respect to testing. Would testing random  
16 number generators be a thing that you did at GLI as  
17 well?

18 A. Yes.

19 Q. Would testing payout percentages also be  
20 a thing you would have done?

21 A. Yes.

22 Q. Are there any other things, that we  
23 haven't mentioned, that you would have done at GLI  
24 that you didn't do in terms of testing at the  
25 New -- New Jersey Division of Gaming Enforcement?

1 game of pure skill?

2 A. Sure.

3 Q. Okay.

4 A. Another good game that I -- I -- I find  
5 is analogous to skill is Skee-Ball.

6 Q. Okay. And -- and go ahead explain then  
7 why that's a game of skill.

8 A. It's an -- it's an alley roll game. Like  
9 your basketball game, the -- the balls roll down,  
10 but there's a finite number of them, and you have to  
11 roll the ball down the alley toward the targets and  
12 try and put the ball through the targets. Generally  
13 speaking, there's not much that would impede a  
14 player's ability to perform that task other  
15 than their own skills; so -- yeah.

16 Q. Okay. And I'm struggling to think of  
17 one, so can you think of a game of pure chance that  
18 you might find at a casino, for example?

19 A. Oh, a slot machine.

20 Q. Okay. And why is a slot machine game a  
21 game of pure chance?

22 A. Well, it's based upon a random number  
23 generator. So a random number generator determines  
24 what the outcome is going to be, and then that's  
25 presented to the player. The player has no



1 interaction with it other than to press the spin  
2 button to initiate a game play.

3 Q. I promise this is going to stop at some  
4 point when we've used all these words once, but  
5 "slot machine" is, of course, a term that's  
6 determined in many jurisdictions, including  
7 Missouri's.

8 A. It is.

9 Q. So when you use the term "slot machine,"  
10 can you tell me what you just meant when you  
11 referred to a slot machine?

12 A. Sure. Generally speaking, a slot machine  
13 is considered a game or a gambling device which has  
14 three elements, which is consideration, chance, and  
15 prize. So it's putting up something of value for an  
16 outcome that's outside of the player's control for  
17 an opportunity to win something of value, like  
18 money.

19 Q. Okay. And most slot machine games that  
20 we might find in a casino here in Las Vegas, they  
21 typically have a display that involves what we call  
22 a reel; is that correct?

23 A. Yes.

24 Q. And can you explain what a reel is and  
25 what that display looks like?

1 of that 30 percent is game classification. And,  
2 generally speaking, those games don't fall within a  
3 regulatory purview, so there's no regulatory agency  
4 that we can go to and ask for advice or criteria  
5 that we need to test to. So we have to kind of take  
6 the game at its merits and describe how it works.

7 Q. Okay. So in a typical engagement  
8 on -- for -- I'm sorry. You just used a term, and  
9 it slipped out of my mind. You said "game  
10 classification." Was that what you called it?

11 A. Yes.

12 Q. In a typical example of game  
13 classification, would you be solicited by the law  
14 firm to provide an opinion as to whether or not a  
15 particular device qualifies as a gambling device  
16 under some state's jurisdiction?

17 A. Well, we're very careful to not render a  
18 legal opinion because we're not a lawyer. But we do  
19 encourage legal counsel to provide us with questions  
20 or criteria that they want us to use when we do our  
21 analysis. So we'll -- we'll go through the  
22 analysis. We'll go through the software. We'll go  
23 through the source code. We'll go through all the  
24 configuration settings, how the player interfaces  
25 with the device. And we'll write up -- I think it's

1 a pretty comprehensive report on how that all works,  
2 and typically, in our findings and conclusions  
3 section, we address the questions from counsel or  
4 the criteria that they provided us and kind of  
5 compare how the operation of the game fares with  
6 their questions or their criteria.

7 Q. Okay. So you raised an important point,  
8 which is that you are not a lawyer?

9 A. Correct.

10 Q. And you do not render legal advice?

11 A. That's correct.

12 Q. Or legal opinions?

13 A. Correct.

14 Q. But you do have familiarity, do you not,  
15 with various state statutes and regulations in the  
16 gaming and gambling industries?

17 A. Yes.

18 Q. And when you are engaging in an analysis  
19 of a machine, do you consider the existence of  
20 statutory definitions of any terms?

21 A. If they're provided to me, yes.

22 Q. And how do those factor into your  
23 analysis?

24 A. Like I said, if -- if legal counsel is  
25 providing us with that as guidance or criteria or

1 a -- you know, questions about that, then we  
2 incorporate that into the report.

3 Q. Okay. You can put this aside for a  
4 moment. We will come back to it, but we've got more  
5 preliminaries to -- to work through.

6 A. Sure.

7 Q. So I know from your submission that you  
8 have been deposed before. How many times have you  
9 been deposed before, roughly?

10 A. More than 50.

11 Q. And would the majority of those  
12 depositions have been given on behalf of the law  
13 firms, as we were discussing moments ago?

14 A. Yes.

15 Q. Okay. Okay. Have there been prior cases  
16 where you have rendered opinions as to whether a  
17 particular device involves an element of chance?

18 A. Yes.

19 Q. Is one of those examples a case called  
20 Gracie Tech? Are you familiar with that case?

21 A. I'm not --

22 Q. Not --

23 A. -- not sure.

24 Q. That's okay.

25 A. We do work for Gracie Tech, but I'm not

1 Q. Again, as we go through this and I ask  
2 questions, if there are significant differences  
3 between what's in this report and others, I'd  
4 appreciate you calling it to our attention. But I  
5 want to turn you first to Appendix B to your report.

6 A. Okay.

7 Q. And can you describe what this is.

8 A. It's an appendix that identifies the  
9 software files and their respective signatures, as  
10 we call them, which is CRC-32 value. And it's used  
11 to verify that the software installed anywhere is  
12 the same as the software that we examined in our  
13 laboratory.

14 Q. Okay. And so as we look through this  
15 document, there are a number of lines that have been  
16 crossed out.

17 A. Yes.

18 Q. Can you explain why those lines have been  
19 crossed out?

20 A. Generally speaking, when we cross out  
21 files, it's done because those files are -- they're  
22 not static. So they might be a text file that gets  
23 updated with log information or something like that.  
24 And if you were to take a signature at any given  
25 time, it would be different than the signature we

1 had in the lab. So we just put a strike-through on  
2 that so that you know that's not significant and  
3 you're not going to get the same signature as what  
4 we had in the lab.

5 Q. When you say "signature," what do you  
6 mean?

7 A. The CRC-32 value under the column labeled  
8 CRC-32.

9 Q. And can you explain in a little more  
10 detail what that is.

11 A. CRC-32 is an acronym for cyclical  
12 redundancy check, a 32-bit. So it is an algorithm  
13 that's used to analyze a file and come up with what  
14 we call a signature. And that's that eight  
15 character CRC-32 that's listed there.

16 Q. Okay. So if I'm understanding  
17 correctly -- and please correct me; I'm not sure I  
18 got this right.

19 But basically, you're saying that the  
20 CRC-32 is a way of verifying that the software that  
21 might be on some other terminal is the same as the  
22 software that is on the terminal that you've  
23 reviewed?

24 A. Correct.

25 Q. And the reason that you've crossed these

1 lines out is that it's your view that even if those  
2 items are missing from the software on that second  
3 terminal, that that would not alter the way that the  
4 machine operates?

5 A. Oh, yeah. It won't alter the way the  
6 machine operates, but it's not so much if it's  
7 missing, but if you get a different signature, if  
8 you get a different CRC-32 value when you do the  
9 comparison, that it's not going to -- it has no  
10 material effect on -- on the game.

11 Q. So if a line is crossed through in this  
12 log, it is because it's your view that that doesn't  
13 affect the way the game operates?

14 A. Well, it's -- it's not static; so it's  
15 not going to be the same. It's -- it's -- it  
16 becomes a frustrating situation to try and compare  
17 the signature of what's stricken through to what's  
18 in our report because it won't match.

19 Q. So maybe I'm -- let me see if I can  
20 understand. Why don't we flip ahead a little bit so  
21 I can find a file and see if we can get on the same  
22 page. Or maybe why don't we look at that first  
23 page, page A-1.

24 The fourth thing that's crossed through  
25 is a line that says, "DefaultFateLog.text." Do you

1 see that?

2 A. Yes.

3 Q. Is that the sort of thing that you're  
4 saying is not static and therefore has been crossed  
5 out?

6 A. Correct. It's a log file.

7 Q. Right. A log file is not static because  
8 it is updated every time an event occurs that is  
9 programmed to be logged.

10 A. Correct.

11 Q. And so if this -- so basically, am I  
12 correct that what you're saying is that if this file  
13 were the reason that the CRC-32 check would differ  
14 between your machine and another machine, that's not  
15 unexpected or -- or problematic?

16 A. Correct.

17 Q. Okay. If you can flip to the next page,  
18 you can see that you have some other items that are  
19 crossed through on this page. I'll just point to  
20 one towards the bottom of the page, which is a file  
21 called "SkillGameSelectionScreenBackground.jpg."

22 First of all, do you agree with me that a  
23 jpg is an image file?

24 A. Yes, it is.

25 Q. And do you agree it's a static file?



1 A. Yeah, not necessarily.

2 Q. Okay. Do you happen to know whether this  
3 particular game tile is a static file or not?

4 A. I don't.

5 Q. Okay. Can you explain to me then why  
6 this jpg file has been crossed out.

7 A. I'm -- I'm not sure. I would have to go  
8 back to my records on this.

9 Q. Okay. If we look a little further down,  
10 it seems also you crossed out something called  
11 "SuperiorSkillGameTile."

12 Do you see that?

13 A. Yes.

14 Q. Can you tell me why that's been crossed  
15 out?

16 A. I -- I don't recall why.

17 Q. Okay. If we go down further, it's -- we  
18 can see that there are cross outs for Choice Skill  
19 Game Selection Screen Background, Diamond Skill HS  
20 Game Selection Screen Background, Diamond Skill  
21 II -- I'm on the next page now -- Game Selection  
22 Screen Background, all of which are png files.

23 First, are png files also image files?

24 A. They are.

25 Q. Are they also static files?

1           A.       They can be, but they -- they may change  
2 because of what's displayed at the time; so I'm not  
3 sure.

4           Q.       Okay. Do you know why any of those files  
5 have been crossed out?

6           A.       I don't recall.

7           Q.       Okay. If we go down to page A-5, do you  
8 see the set of cross outs about halfway down the  
9 page on page 5?

10          A.       Yes.

11          Q.       It says there that you crossed out -- I  
12 believe these are all different directories or  
13 folders called Choice Skill, Choice Skill II,  
14 Diamond Skill HS, Diamond Skill II, Diamond  
15 Skill III, Diamond Skill NF, and then those  
16 directories are all crossed out.

17                   Do you know why they've been crossed out?

18          A.       I don't recall.

19          Q.       Do you know whether those directories  
20 contained files?

21          A.       I don't recall.

22          Q.       If we go further down, it says,  
23 "BonanzaBucksGameTile.png, FruitySevensGameTile.png,  
24 MajorCashGameTile.png," all of which have been  
25 crossed out.

1 Do you have any recollection of why those  
2 have been crossed out?

3 A. I don't -- I don't -- I don't recall.

4 Q. Okay. So rather than go through this  
5 report in great detail, if you could just flip  
6 through the next couple of pages and review the  
7 cross outs.

8 I will ask you, do you have any  
9 recollection of why any of these items were crossed  
10 out on this report?

11 A. I honestly don't recall why we crossed  
12 them out.

13 Q. Okay. The fact that there are game tiles  
14 or images here for games such as Choice Skill and  
15 Diamond Skill, does that reflect that there is  
16 materials from other games that are within the  
17 software of this game?

18 A. No. I'm not sure why that's there. I  
19 don't recall why. But we crossed it out for a  
20 reason. It is entirely plausible that there may  
21 have been something on a terminal that we have that  
22 held some legacy files on there from something else  
23 we tested previously.

24 Q. Sorry. I'm not sure I understood that.  
25 What -- why would there be files from another test

1 on this terminal?

2 A. I'm speculating.

3 Q. Okay. Well, I thought --

4 A. I'm speculating on that, that it may have  
5 been just legacy from a previous examination and it  
6 may have just been retained by the memory of the  
7 device.

8 Q. Well --

9 A. And we crossed it out rather than do  
10 something else.

11 Q. All right. So let's be -- let's be clear  
12 here. So what we described a moment ago in terms of  
13 your process was that you were disconnecting a hard  
14 drive from the terminal and then adding a new hard  
15 drive in that reflects the software for one of these  
16 machines?

17 A. Correct.

18 Q. How, if that's the case, would it be  
19 possible for any legacy files to be left on that  
20 hard drive if you received that hard drive from  
21 Torch or from Banilla?

22 A. Well, I think I talked to you about a  
23 logic board.

24 Q. Yes.

25 A. So it's possible that the logic board

1 would held -- held some memory, retained some  
2 memory --

3 Q. So a logic --

4 A. -- that was on there previously.

5 Q. -- a logic board might hold files in  
6 active memory, but it would not have a file system  
7 in the way that a hard drive would, would it?

8 A. I don't know. I wouldn't say that.

9 Q. You would say that a logic board would  
10 have -- would have stored memory in the way that a  
11 hard drive would?

12 A. It's possible.

13 Q. Well --

14 A. It's possible that it reads what's on the  
15 hard drive and stores something on it.

16 Q. So is what's listed here a directory of  
17 the files that are on the hard drive, a directory of  
18 the files that are on the logic board, or both?

19 A. This is what we extracted from the  
20 terminal that we examined.

21 Q. And so you're saying you cannot -- you  
22 cannot, with confidence, testify today whether any  
23 of the items on this list came from the particular  
24 hard drive that you were asked to review?

25 A. If I had known you were going to ask me

1 questions about the crossed-out files, I would have  
2 gone back and prepared for that, but I wasn't  
3 prepared for that, and this report is more than five  
4 years old.

5 Q. Well, this is the -- this is a portion of  
6 the report that you submitted in this case slightly  
7 more than a month ago; correct?

8 A. No. This is a report that I prepared  
9 May 1st, 2018, and we said that we haven't gone back  
10 and done an examination.

11 Q. Okay.

12 A. You received this report a month ago.

13 Q. So -- but this was an exhibit to the  
14 report that you prepared about a month ago?

15 A. Yes.

16 Q. Okay. Did you not review your reports  
17 prior to coming to your deposition today?

18 A. I did review my reports. I didn't think  
19 we were going to get into the file structure and the  
20 file signatures. I didn't think that was relevant.  
21 I think the salient parts of -- point of this and  
22 what I thought was relevant is how the game  
23 operates.

24 Q. Okay. So if I were to take you through  
25 the other exhibits to the -- so Exhibits B through

1 E, which also are reports that you previously  
2 prepared and which also contain strikes to various  
3 files, would you have any ability to give me  
4 testimony today as to what the basis for those  
5 strikes was?

6 A. I would not.

7 Q. Okay. Who -- who strikes these things  
8 out? Is that a decision that you make?

9 A. It's -- there's a member of my staff that  
10 gets these signatures, and he works with the  
11 manufacturer to determine the purpose and intent of  
12 each of the files, and then we make that  
13 determination as to whether it's relevant or not.

14 Q. When you say you work with the  
15 manufacturer to determine the purpose and intent of  
16 the files, what does that mean? How do you work  
17 with them?

18 A. We provide the signatures that we extract  
19 from the device to the manufacturer, and then we ask  
20 them to verify that that's an accurate depiction of  
21 what's there. They'll often come back and say that,  
22 "Well, this file is not static." You know, it's  
23 dynamic. It's like a log file.

24 Q. Yeah.

25 A. And then if there's any other files that

1 aren't relevant, well, they'll tell us why they're  
2 not relevant.

3 Q. Okay.

4 A. And I don't have that information with me  
5 today.

6 Q. Fair enough.

7 And you then -- do you then accept  
8 the -- the statements of the manufacturers as to  
9 which files are not relevant and simply implement  
10 their strikes?

11 A. Well, in the immortal words of former  
12 President Ronald Reagan, we trust and verify.

13 Q. Okay. So in other words, if they had  
14 asked you to strike out something that you believed  
15 was important to the game play, you would have had a  
16 dialogue about that --

17 A. Yes.

18 Q. -- and made a -- reached a conclusion?

19 A. Yes.

20 Q. Okay. And when you say, "we verify," is  
21 that something you would do or your associate would  
22 do?

23 A. Generally, my associate would do that.

24 Q. Okay.

25 A. But if I need to be involved, I will be



1 involved.

2 Q. Let me turn you to page 6 --

3 A. Okay.

4 Q. -- A-6 of your Appendix B.

5 A. Sure.

6 Q. So some things that are not crossed out  
7 on this page are the file folder names. And so you  
8 can see here that there is a section called Game  
9 Tiles/Diamond Skill HS; another folder -- I'm not  
10 going to read the whole file path, but it ends  
11 Diamond Skill II; another file folder that ends with  
12 Diamond Skill III; another that ends with Diamond  
13 Skill NF.

14 Is it fair to say that these are folders  
15 that contain image files from the games Diamond  
16 Skill HS, Diamond Skill II, Diamond Skill III, and  
17 Diamond Skill NF?

18 A. Well, we didn't strike those specific  
19 files because they were stricken in the previous  
20 directory. If you go back to page A-5 --

21 Q. Uh-huh.

22 A. -- well, it should be B-5. That was a  
23 mistake on our part. But if you go back to page 5  
24 of 22, you'll see under -- about the middle of page  
25 there, "Program Files/bin/Applications/Front End --

1 Q. Oh, I see.

2 A. -- Images/Game Tiles." All those  
3 directories have been stricken. We just didn't  
4 restrike them.

5 Q. I understand. Well, thank you. I  
6 actually hadn't noticed that; so I appreciate that  
7 clarification.

8 A. No worries.

9 Q. But -- but my question is are these all  
10 folders that contained images from these -- these  
11 other games?

12 A. I -- I don't know why they're there.

13 Q. Okay.

14 A. They -- they had no bearing. My  
15 understanding is that they had no bearing on  
16 the -- I believe there are five game themes in -- in  
17 No Chance Game Suite I, and they had no bearing on  
18 that.

19 Q. Okay. If you turn to page 9.

20 A. Sure.

21 Okay.

22 Q. There's a folder there that is called  
23 "Application/Helios Agent."

24 Do you know what Helios Agent is?

25 A. I don't.

1 Q. Do you know why it's struck through?

2 A. I don't. I don't recall.

3 Q. Oh, my staples fell out.

4 Okay. So I know that you don't recall  
5 the specific reasons that any of these things were  
6 struck out, but can you give me an explanation once  
7 more of why generally things are struck out in  
8 exhibits like Appendix B?

9 A. Typically, they're not static or they're  
10 not relevant.

11 Q. Not static or not relevant. And so I  
12 understand --

13 A. Right. That means they don't -- they  
14 don't have any purpose for the operation of the  
15 games.

16 Q. Okay. I'm sorry. I didn't mean to speak  
17 over you.

18 I understand what you mean by "not  
19 static." And can you now define what you mean by  
20 "not relevant."

21 A. They have -- they have no purpose in the  
22 operation of the games that are offered.

23 Q. So to take an example -- and I -- I know  
24 I'm partly asking you to speculate a little bit,  
25 but -- so if we look at Appendix B once again. I am

1 on -- yeah. Appendix B, let's just take page A-8.  
2 As we can see, there's a series of strikes through  
3 Classic Sevens Game Tile, Hot Tamales Game Tile,  
4 et cetera.

5 Based upon your ordinary practice, do I  
6 understand that what would happen here is that you  
7 would -- the manufacturer would tell you that those  
8 tiles are not used in this configuration of the  
9 game, and then you would verify that that's the  
10 case --

11 A. Correct.

12 Q. -- and then based upon that, you would  
13 have struck out these tiles?

14 A. Correct.

15 Q. Okay. Did you examine whether it was  
16 possible to reconfigure the game in such a way that  
17 these tiles would be used?

18 A. Yes.

19 Q. And what did you conclude?

20 A. They -- they were not able to be enabled.

21 Q. I'm sorry? Say that again.

22 A. These games were not -- there was no  
23 ability to enable those games.

24 Q. When you say "no ability," for whom?

25 A. The operator specifically or the player.

1 rejected that argument. So is it fair to say that  
2 you disagree then that the existence of the preview  
3 feature does not render the game a no-chance game?

4 A. I have no opinion on the court's opinion.

5 Q. Do you have an opinion as to whether or  
6 not the existence of a mandatory preview feature  
7 renders the game at issue in this case a no-chance  
8 game?

9 MR. CRAIG: Object to form.

10 THE WITNESS: As I see it, to be a  
11 gambling device, universally, across all 50 states,  
12 you have to have consideration, chance, and prize.

13 BY MR. FINNERAN:

14 Q. Okay.

15 A. Eliminate any one of those three  
16 elements, and you no longer have a gambling device.  
17 I often refer to it as a three-legged stool.  
18 Eliminate one of the legs, and the stool falls over.

19 If you know what the outcome is, then  
20 you're eliminating that unknown element, which would  
21 be considered chance. So if you know what the next  
22 outcome is, then there's no chance in what the next  
23 outcome is. It seems that the court is focused on a  
24 hope of gain and not the next outcome, but the  
25 outcome after that, which is really getting into

1 any significant differences. But describe generally  
2 to me what your examination of the No Chance Game  
3 Suite 1 Terminal Version 2.3.0.23596 consisted of.

4 A. If it helps, our examination and our  
5 process was the same for all five.

6 Q. Great.

7 A. So we -- we look at these games from  
8 three different perspectives: from the  
9 manufacturer's perspective, how they design their  
10 software, how it's intended to work, and what's in  
11 the source code because we do a source code  
12 analysis; from the operator's perspective of what  
13 features and options are available for the operator  
14 that they can configure; and from a player's  
15 perspective as to how the player interacts with the  
16 game and how they play the game. And that's the  
17 three-prong approach.

18 Now, we can dig deeper on any one of  
19 those, but the reports that we issued kind of get  
20 into the details of the different game themes that  
21 are available, and then the operator has the ability  
22 to enable or disable any of those game themes.

23 How the player interacts with that,  
24 there's usually a bill acceptor on the exterior of  
25 the machine. They can put money in it. But in

1 Q. Okay.

2 A. So the player had no access to it. The  
3 operator had no access to it. The only games that  
4 were available for the operator were the five games  
5 offered there, and there's a list of them. I saw  
6 it. It was on page -- in this Appendix B. And it's  
7 easily found in the report.

8 Q. Yeah.

9 A. I believe it's on the --

10 Q. It's on the second --

11 A. -- on the second page.

12 Q. On the second page of the report, there's  
13 a list of six games.

14 A. Okay. On page A-9 of the -- of  
15 Appendix B, there's a list of the five games  
16 offered -- or six games I guess. So Kitty Kash,  
17 Lucky Lollipops, Searing Sevens, Shammy Sevens,  
18 Spooky's Loot, and Wheel Deal.

19 Q. Okay. Very helpful. Thank you.

20 A. Yeah.

21 Q. So is it your testimony that it is not  
22 possible for -- let's start with the player.

23 A. Sure.

24 Q. For a player of the game to access any of  
25 the games other than the six listed on that page you

1 machines and that the RNG picks the stop positions.

2 Q. Right.

3 A. And those stop positions are mapped to  
4 the symbols that are going to be displayed. Yes.

5 Q. Okay. So now turning -- to draw an  
6 analogy here, make sure I'm understanding how this  
7 machine works. When you say there's a list of  
8 predetermined outcomes, are those predetermined  
9 outcomes dollar amounts or arrangements of the  
10 pictures or some combination of the two?

11 A. I'm not exact on that, but I think it's a  
12 combination of the two.

13 Q. Okay. Can you explain what you mean by  
14 that.

15 A. I -- there's a database, and I  
16 believe -- a table and a database. And I believe  
17 that the information in that contains the prize  
18 value and like a mapping of the symbols that are  
19 going to be there --

20 Q. Okay.

21 A. -- that will be presented.

22 Q. Okay. I don't believe I've seen anything  
23 to reflect that in any of your reports.

24 A. No.

25 Q. How confident --



1 A. We didn't -- we didn't do that deep of a  
2 dive, and I'm trying to pull this out of five years  
3 of memory; so --

4 Q. No, I understand.

5 A. Yeah.

6 Q. Well, you understand why I have to ask  
7 the question as well; right?

8 A. I do understand why you're asking the  
9 question, and that's why I'm trying to give you an  
10 answer, but I guess I'd rather not speculate.  
11 Possibly, that's -- that's my best recollection, but  
12 I am --

13 Q. Okay.

14 A. -- you know, stretching to try and recall  
15 that.

16 Q. Fair enough.

17 Why don't we -- why don't I try this: So  
18 the prize viewer --

19 A. Yes.

20 Q. -- does that display an amount, or does  
21 that display a combination of symbols or both?

22 A. My recollection it -- it presents a prize  
23 value.

24 Q. Okay. So when you refer in your reports  
25 then to the idea of the outcomes being predetermined

1 and knowable to the player, are you referring to the  
2 dollar amount, the arrangement of symbols, or both?

3 A. Well, it's reflected as a dollar amount.  
4 So it's reflected as the prize value, and that's all  
5 predetermined.

6 Q. Right.

7 A. Yeah.

8 Q. And so am I correct that when you use the  
9 word "outcome" in your -- your reports, you're  
10 referring to predetermined outcomes, it's the dollar  
11 amount you're referring to?

12 A. The prize value.

13 Q. Is there any way for the player to  
14 predict what combination of reels of symbols will be  
15 shown to him on the next play of the game?

16 A. I don't recall if that's the case or not.  
17 It's --

18 Q. How would player --

19 A. There is -- there's no -- I know that  
20 there's no randomness in the software; so there's no  
21 random selection of anything, no random selection of  
22 game outcome, no random selection of the symbols, no  
23 random selection of anything. So that's  
24 why -- that's why I'm recalling that the database,  
25 the table and the database, contains the prize value

1 and a mapping of the symbols, because there's  
2 nothing going on that would enable the symbols to be  
3 selected, you know, from the pool.

4 Q. Right. But my question is now about the  
5 prize viewer feature. And so is there any way for  
6 the player to predict what the assortment of symbols  
7 will be on the screen by using the prize viewer  
8 feature?

9 A. I'll be honest with you, I don't know  
10 what relevance that has. If the player knows what  
11 the prize value is, that's really what's important,  
12 that they want to play for the prize value. I mean,  
13 what the symbols are that are going to be presented  
14 for that prize, I don't know if it has any  
15 relevance. So I really don't know the answer to  
16 your question, because I can't recall that, but --

17 Q. We can -- we can determine the -- the  
18 relevance of it, but I'm just asking the question.

19 A. Sure.

20 Q. Is there a way for the player to predict,  
21 based upon viewing the prize viewer feature, what  
22 symbols will then appear on the screen next to  
23 indicate whether there's a win or not?

24 A. I think that the player will be able to  
25 see the prize, and if they want to examine the pay

1 these games as well?

2 A. I do.

3 Q. Okay. Would you agree with me that where  
4 the -- what the various outcomes are on this  
5 predetermined list about sequence list of outcomes,  
6 that the winning outcomes are distributed randomly  
7 within that sequence?

8 A. There's nothing --

9 MR. CRAIG: Object to form.

10 THE WITNESS: There is nothing random  
11 about anything in this software or the database.

12 BY MR. FINNERAN:

13 Q. I'm not asking about what the software  
14 does. I'm asking about the distribution of the  
15 winning outcomes in the list of sequential outcomes.

16 Is there -- is that random?

17 MR. CRAIG: Object to form.

18 THE WITNESS: No, it's not random.

19 BY MR. FINNERAN:

20 Q. Is there any predictable sequence of  
21 those numbers within the 100,000, let's say, pool?

22 A. If we --

23 MR. CRAIG: Object to form.

24 THE REPORTER: Hold on.

25 THE WITNESS: I'm sorry. If you've

1 different Rolodexes: one representing the 25-cent  
2 Rolodex and the other, the 50-cent Rolodex.

3 Q. I thought you told me that it was  
4 one -- that it's one Rolodex but multipliers of  
5 those different pools?

6 A. So it's in a database, and the database  
7 is able to track each denomination of the same  
8 sequence. So it's just here's times one, here's  
9 time two, here's times four. Okay. 25 cent,  
10 50 cent, dollar. And it just knows where each of  
11 those denominations are in the same sequence.

12 Q. Okay. We talked a little bit about this  
13 idea of entry points. Is the determination of where  
14 the game enters the sequence, is that -- how is that  
15 determined by the machine?

16 A. Banilla.

17 MR. CRAIG: Object to form.

18 THE WITNESS: Banilla determines the  
19 entry point.

20 BY MR. FINNERAN:

21 Q. Is it hard coded into the code of the  
22 machine?

23 A. It -- it is determined -- I'm not certain  
24 on how they do it. It is done by a human being at  
25 Banilla. They determine that entry point, and it is

1 come back to it, but otherwise, we can be done with  
2 that. Let me make a note so I can try and track it  
3 down.

4 Okay. You don't need to reference your  
5 report, but just referring to the five devices that  
6 you were sent to review, we talked earlier you were  
7 sent hard drives for those devices; is that correct?

8 A. Yes.

9 Q. Are you aware of any changes that were  
10 made by either Banilla or Torch to the devices  
11 before they were sent to you for review?

12 A. Not that I'm aware of.

13 Q. Okay. Let me show you --

14 MR. FINNERAN: What are we on? I'm  
15 sorry.

16 THE REPORTER: 9.

17 BY MR. FINNERAN:

18 Q. I'm going to hand you what I've asked to  
19 be marked for identification as Exhibit 9.

20 A. Thank you.

21 (Farley Exhibit 9 marked.)

22 BY MR. FINNERAN:

23 Q. Okay. So this is an email chain, and as  
24 with all email chains, it sort of goes in reverse  
25 chronological order. So if I bring you to the

1 Nick review everything and make sure that is the  
2 only issue before we decide to make any change."

3 And then you can look at the top email,  
4 if you'd like.

5 So, first of all, I read you a couple  
6 other emails. I assume you were not aware of those  
7 emails either?

8 A. Correct.

9 Q. Okay. We talked earlier about the  
10 Appendix Bs to your reports --

11 A. Yes.

12 Q. -- that list all those files.

13 A. Yes.

14 Q. If there were changes made to the devices  
15 after you had reviewed them, would that alter what  
16 would appear in those Appendix Bs?

17 A. Yes.

18 Q. Would it potentially at least require a  
19 new test then to validate that the machines actually  
20 were, you know -- that your conclusions were still  
21 true of the machines?

22 MR. CRAIG: Object to form.

23 THE WITNESS: It would change the  
24 signatures, not that it would change the operation  
25 of the game, but we would recommend that it be

1 reevaluated and a new report be issued to ensure  
2 that the signatures match what we reported upon.  
3 That would be our recommendation.

4 BY MR. FINNERAN:

5 Q. Right. So you would not be able to say  
6 your conclusion would change. It might; it might  
7 not?

8 A. Correct.

9 Q. But you would recommend that a new test  
10 be done in order to ensure that your conclusion  
11 still holds?

12 MR. CRAIG: Object to form.

13 THE WITNESS: Well, at the very least to  
14 make sure that Appendix B is updated to reflect  
15 the -- the correct software that's being utilized.

16 MR. FINNERAN: Okay. If I can mark this  
17 as Farley Exhibit 10.

18 (Farley Exhibit 10 marked.)

19 BY MR. FINNERAN:

20 Q. Okay. This is an email chain branching  
21 off the chain we just looked at before. So if you  
22 look at the very bottom of the email, you'll see  
23 where it says, "Thank you, Jason. Just make sure  
24 we're talking about the same thing."

25 And if you'd like to refer back to the



1 set. We just need you to verify the source code,  
2 please."

3 First, have you seen these emails before?

4 A. No, I haven't.

5 Q. Do you recall a conversation with  
6 Mr. Smith about source code around this time?

7 A. I don't recall that.

8 Q. Okay. Is it fair to say that in putting  
9 together any opinion or report or analysis  
10 from -- on behalf of any client, you rely upon the  
11 client providing you with accurate information about  
12 their programs?

13 A. Absolutely.

14 Q. Okay. I tried to get organized over  
15 lunch, and it's already all gone to hell, but okay.

16 I would like to talk to you a little bit  
17 more about some of the topics we were discussing  
18 before our lunch break about the operation of the  
19 Torch devices.

20 A. Okay.

21 Q. So we talked about the idea that the  
22 Torch devices deliver outcomes within any particular  
23 game and play level in a sequential order; correct?

24 A. Yes.

25 Q. Is there any way for a user to reset the

1 A. Well, it's an electronic pull-tab, and  
2 that's considered a -- a game of chance.

3 Q. Okay. Do you also agree then that  
4 the -- well, we're going to argue about what the  
5 word "contingent" means; so I'll skip that.

6 So now I want you to imagine -- well, let  
7 me ask you this: Are there games that do involve  
8 prize viewers where instead of having a sequentially  
9 delivered set of outcomes, there's a randomly  
10 selected set of outcomes using a random number  
11 generator?

12 A. I think some of the court decisions that  
13 you presented to me earlier discussed that.

14 Q. Indeed.

15 In your opinion, are those games games  
16 that involve an element of chance?

17 A. I really think that the prize viewer  
18 takes out the element of chance from a gambling  
19 device.

20 Q. So in your view -- this -- what I'm  
21 trying to get to is the prize viewer in your view is  
22 the most important aspect of why the Torch devices,  
23 in your opinion, are not either games of chance or  
24 games that depend on future contingent events  
25 outside the control of the player. Is that fair to

1 say?

2 A. Okay. I'll go with that. I don't know  
3 what "contingent" means, but you said it, and for  
4 argument's sake, okay.

5 Q. Let's -- let's stick with -- let's stick  
6 with games of chance then, because we all agree on  
7 what that is, I think.

8 A. Sure.

9 Q. So, in other words, the presence of the  
10 prize viewer feature in your mind, because it gives  
11 knowledge to the player of what the next outcome is,  
12 in your view, that removes the element of chance in  
13 the game that would otherwise be present; is that  
14 correct?

15 A. Absolutely.

16 Q. Okay.

17 A. That's what chance is, it's an unknown  
18 event.

19 Q. Okay. So now I want you to imagine a  
20 player who is unaware of the existence of the prize  
21 viewer feature. So they -- they see the words  
22 "prize viewer" on the screen, but they don't  
23 understand what it is and don't press the button.  
24 If that player plays the game in that fashion, is  
25 the player playing a game of chance?

1 BY MR. FINNERAN:

2 Q. I'm not asking about their intent. I'm  
3 asking about their ability to read the English  
4 language.

5 MR. CRAIG: Same objection.

6 THE WITNESS: It goes to their intent.  
7 If a player is intent to play this game and cannot  
8 read what's on the screen, regardless of whether  
9 they're illiterate or speak a different language,  
10 that is their intent. It doesn't change the game.  
11 The game has the prize viewer feature, and that's  
12 the way it was designed.

13 BY MR. FINNERAN:

14 Q. Okay. I think you said earlier that you  
15 are not certain as to how the sequentially ordered  
16 list of predetermined finite outcomes is initially  
17 generated by Banilla; is that correct?

18 A. Yeah, that's correct. My understanding  
19 is it's done by a human being.

20 Q. Would you agree with me if instead it was  
21 generated through a pseudorandom number generator,  
22 then that would mean the game would involve an  
23 element of chance?

24 A. No.

25 Q. Why not?

1           A.     Because that pseudorandom number  
2     generator is not existent on the device.   There is  
3     nothing in the software installed in the Torch  
4     devices that has the random number generator.

5           Q.     Okay.   So we talked a moment ago about an  
6     electronic pull-tab machine.

7           A.     Yes.

8           Q.     Is there -- and I think we said there  
9     were some examples of those machines that don't  
10    involve random number generators?

11          A.     Some do; some don't.   Correct.

12          Q.     And so I think we agreed that those which  
13    do not involve random number generators but which do  
14    not involve any prize viewer feature are nonetheless  
15    games of chance?

16                 MR. CRAIG:   Object to form.

17                 THE WITNESS:   They don't have a prize  
18    viewer.

19    BY MR. FINNERAN:

20          Q.     Correct.

21          A.     Right.

22          Q.     So -- okay.   I think I understand, but  
23    let me make sure we're on the same page.   What  
24    you're saying is that even if the list of outcomes  
25    were determined randomly, in your view, the

1 existence of the prize viewer feature removes the  
2 element of chance from the game?

3 MR. CRAIG: Object to form.

4 THE WITNESS: The prize viewer feature  
5 eliminates that third leg of a stool that is the  
6 element of chance. Players know what -- what the  
7 outcome is going to be; so there's no chance  
8 involved in it. There's no -- there's nothing  
9 unpredictable about the outcome if you use the prize  
10 viewer feature.

11 BY MR. FINNERAN:

12 Q. Okay. Is there any skill involved in the  
13 operation of a Torch device by a player?

14 A. Not that I'm aware of. I mean, you can  
15 use strategy to try and find the best outcome but  
16 there's no skill.

17 Q. Okay. We talked about horse racing  
18 earlier. You brought up horse racing. Would you  
19 agree with me that horse racing is a game  
20 where -- excuse me -- not horse racing. That's the  
21 same thing I mixed up with you earlier. Betting on  
22 horse racing is what I'm talking about.

23 A. Sure.

24 Q. A person who bets on a horse race, is it  
25 fair to say that they are betting on a future

1 finite pool."

2 And then if you skip two sentences  
3 forward, it says, "After the selection of the first  
4 game outcome starting point in the table of  
5 predefined outcomes, the software does not randomize  
6 or shuffle outcomes based on play, nor does it allow  
7 operator interaction with the machine to alter the  
8 predefined outcomes. Neither the player" -- excuse  
9 me -- "neither the operators nor the players have  
10 the ability to affect the game outcomes that are  
11 distributed from the finite pools."

12 First, did I read paragraph 7 correctly?

13 A. Yes. With the exception of skipping a  
14 couple of sentences.

15 Q. Correct. Thank you.

16 So in both the first sentence and that  
17 fourth sentence, you refer to after the initial game  
18 outcome selected and after the selection of the  
19 first game outcome starting point. Prior  
20 to -- well, let me start here. How is the first  
21 game outcome selected?

22 MR. CRAIG: Object to form.

23 THE WITNESS: So the first game outcome  
24 is selected from the pool by an index that's  
25 selected by Banilla Games.

1 BY MR. FINNERAN:

2 Q. When you say "selected by Banilla Games,"  
3 what do you mean?

4 A. Banilla determines the starting point in  
5 the pool.

6 Q. Okay. You mean a human being at  
7 Banilla --

8 A. Yes.

9 Q. -- makes that decision?

10 A. A human being.

11 Q. Okay. Let me show you at page -- excuse  
12 me -- paragraph 8. It says -- wait a second.

13 Okay. Sorry. I meant paragraph 9. It  
14 says, "Because the game outcomes are determined  
15 sequentially from the appropriate predetermined  
16 finite pool and further because the prize viewer  
17 feature will always have the game outcomes available  
18 to be displayed to the player, if the player chooses  
19 to utilize that feature on any given play of the  
20 game on the Torch devices, chance does not play a  
21 role."

22 First, did I read that paragraph  
23 correctly?

24 A. Yes.

25 Q. And is that consistent with



1 you could return to that, please.

2 A. That would be my case file.

3 Q. I'm sorry. It's not Farley 2.

4 Exhibit A to your report, which I believe  
5 we've put in as an exhibit already. I didn't mark  
6 it unfortunately.

7 MR. CRAIG: It's 7.

8 MR. FINNERAN: 7.

9 MR. CRAIG: This one (indicating).

10 THE WITNESS: That's my report on the No  
11 Chance Game Suite I?

12 BY MR. FINNERAN:

13 Q. Correct.

14 A. Okay.

15 Q. Thank you.

16 Can I turn your attention to page 2 of  
17 that document.

18 A. Sure.

19 Q. Okay. At the very bottom of the page,  
20 can you read that sentence with me that says, "The  
21 first game outcome selected from each predetermined  
22 finite pool is selected indiscriminately from a  
23 table of predefined starting indices."

24 And then it goes on to say, "The No  
25 Chance Game Suite I Terminal then continues to

1 deliver each of the game outcomes sequentially to  
2 the player from the predetermined finite pools of  
3 available game outcomes."

4 First, did I read that correctly?

5 A. Yes, you did.

6 Q. Okay. So in that first sentence, you  
7 used the word "indiscriminately."

8 A. Yes.

9 Q. Can you tell me what you mean by that?

10 A. It -- there's no -- no apparent rhyme or  
11 reason. When we wrote this report, we didn't think  
12 that it was relevant; so we used that term. It  
13 seems to have become relevant in recent history, and  
14 since then I've learned that it is done by a human  
15 being at Banilla.

16 Q. So I need to understand --

17 A. We wrote this report in 2018.

18 Q. Yes.

19 A. Yes. So in 2018, we decided that there's  
20 a starting point that's determined in the pool, but  
21 we don't know how it's done. I don't know how  
22 important it is; so we're just going to say it's  
23 done indiscriminately.

24 Q. Okay.

25 A. So it just gives an overarching method of

1 determining that starting -- the starting index. It  
2 seems that now in this litigation and the Cole  
3 County litigation it became an issue; so we dug  
4 deeper, and we were able to learn that the starting  
5 index is determined by a human being at Banilla  
6 Games.

7 Q. And is it your testimony that's true of  
8 each of the five Torch devices that you considered?

9 A. Yes.

10 Q. And what is the basis for your belief  
11 that this is determined by a human being?

12 A. The testimony of Kevin Morse and  
13 follow-up discussions with folks at Banilla Games.

14 Q. Okay. Is it based upon your own review  
15 of the machines?

16 A. Well, yeah, I mean, follow-up subsequent.  
17 Well, I mean, we reviewed the machines, and then  
18 this topic came up.

19 Q. Right.

20 A. And then we inquired as to how it's done.

21 Q. Have you since revisited the source code  
22 of the machines to confirm whether what Banilla, you  
23 say has -- what they have said is actually true?

24 A. Well, this wouldn't be in the source  
25 code.

1 MR. CRAIG: Right.

2 BY MR. FINNERAN:

3 Q. Why would it not be in the source code?

4 A. Because it's done by a human being.

5 Q. Well --

6 A. It's the index in a database; so it's  
7 done by a human being as to where that index is in  
8 the database. It has nothing to do with the source  
9 code. The source codes just looks at where it is  
10 and goes to the next one.

11 Q. But that assumes that Banilla's statement  
12 that you are recounting that a human being does it  
13 is correct. My question is have you done anything  
14 by reviewing the source code to confirm that there  
15 is no other method by which the pool is -- the  
16 starting position of the pool is chosen?

17 MR. CRAIG: Object to form. I think he  
18 just testified that's impossible.

19 MR. FINNERAN: I'm sorry.

20 MR. CRAIG: He just testified that it's  
21 impossible because it's not in the source code.

22 BY MR. FINNERAN:

23 Q. Can you answer the question, please.

24 A. It's not in the source code. We did  
25 review the source code, and the starting location is

1 not in the source code.

2 Q. You've done so since hearing that from  
3 Banilla?

4 A. No. We did it when we did this initial  
5 review in 2018.

6 Q. And you were confident based upon that  
7 review now seven years -- sorry -- five years ago  
8 that there's nothing in the source code that would  
9 reflect something other than human choice dictating  
10 which of the -- where the starting position is?

11 A. There was nothing in the source code that  
12 we saw that indicated where the starting position  
13 would be in the code.

14 Q. Okay.

15 THE REPORTER: In the code?

16 THE WITNESS: In the code, yes. Sorry.

17 I'll take a swig of water. I'm getting  
18 soft. I'm getting quiet.

19 BY MR. FINNERAN:

20 Q. Have you -- have you been retained by  
21 Banilla before?

22 A. In what regard?

23 Q. As an expert witness.

24 A. Not by Banilla.

25 Q. Have you been retained by an attorney

1           You can put those away.

2           You mentioned earlier -- I asked you this  
3       question that the directory list in Appendix B to  
4       each of your reports is a complete list of all the  
5       files, whether struck through or not, on each  
6       device; is that correct?

7           A.       That's my recollection, yes.

8           Q.       Does that include any SQL databases that  
9       might be connected to or associated with the device?

10          A.       No.

11          Q.       Why does it not include that?

12          A.       SQL is not generally a software file; so  
13       it's not in the software directory. It's usually  
14       separate, and the SQL database can't be signed.

15          Q.       Just for the benefit of the court  
16       reporter, SQL is S-Q-L, all capital letters;  
17       correct?

18          A.       Correct, yes.

19          Q.       So when you say cannot be signed,  
20       what does that mean?

21          A.       There's no software associated; so trying  
22       to use a signature tool, like our CRC-32, it doesn't  
23       render any results that are meaningful.

24          Q.       Did you -- in the course of your analysis  
25       of any of the five Torch devices you've reviewed,

1 scope of his opinions in the report.

2 THE WITNESS: I cannot.

3 BY MR. FINNERAN:

4 Q. You did examine the source code in  
5 preparing your opinions; correct?

6 A. One of my staff did.

7 Q. Did you not personally examine the source  
8 code?

9 A. I did not.

10 Q. Okay. Did your staff report to you at  
11 any point that there were random functions inside of  
12 the source code for any of the Torch devices in your  
13 report?

14 MR. CRAIG: Object to form.

15 THE WITNESS: They confirmed to me that  
16 there were no random functions in there, but I don't  
17 know where this source code came from. You're  
18 telling me it came from there. I don't know that.

19 BY MR. FINNERAN:

20 Q. I know.

21 A. And I'll tell you right now, this wasn't  
22 obtained legally. He reverse engineered something  
23 without permission from Banilla, which means that he  
24 broke security codes to do that --

25 Q. Well --

1 that he hasn't actually personally reviewed the  
2 source code, I think we're going to be done with  
3 this pretty soon.

4 I just want to ask a couple questions  
5 about Farley 18. Again, the same representation  
6 with respect to Farley 18, this is an excerpt of  
7 source code from an independently sourced device  
8 that TNT purchased that matches the version number  
9 and name of the second device in Mr. Farley's  
10 report.

11 MR. CRAIG: We'll designate it as  
12 confidential, attorneys' eyes only.

13 BY MR. FINNERAN:

14 Q. Okay. So here do you see a statement  
15 that says, "DECLARE@randomIndexId"?

16 A. Yes.

17 Q. Can you tell me what the declare function  
18 means.

19 MR. CRAIG: Object to form. Beyond the  
20 scope of his testimony and opinions in this case.

21 THE WITNESS: I'm under a nondisclosure  
22 agreement, and I'm not at liberty to discuss source  
23 codes for Banilla. And Banilla is not a party in  
24 this case.

25 // // //



1 BY MR. FINNERAN:

2 Q. That's true.

3 A. So I'm very uncomfortable with this line  
4 of questioning and you asking me specific questions  
5 about code that you're alleging is Banilla's, which  
6 was acquired, quite honestly, illegally. It was  
7 hacked. And I know of another lawsuit filed against  
8 another expert who did the same thing, and I'm  
9 not -- I'm not at liberty to discuss the source code  
10 for Banilla in this matter because I'm under a  
11 confidentiality agreement.

12 Q. What is that -- I'm not aware of this  
13 confidentiality agreement; so tell me what  
14 confidentiality agreement you're under.

15 MR. CRAIG: I think that I'll object to  
16 that.

17 BY MR. FINNERAN:

18 Q. With whom -- with whom -- who is a party  
19 to this confidentiality agreement?

20 A. I'm not positive if it's Banilla or  
21 Grover but one of their two companies.

22 Q. Okay. And I understand the -- the  
23 agreement made prevents you from revealing some  
24 information to me without violating the agreement.  
25 What -- can you describe generally what source of

1 that that is somehow unethical or illegal?

2 A. I do.

3 Q. Okay. Does that prevent -- does that  
4 prevent you from answering my questions?

5 A. I don't think it's appropriate for me to  
6 discuss what you're portraying to me as Banilla's  
7 source code when I'm under a nondisclosure agreement  
8 with Banilla.

9 Q. Okay.

10 MR. FINNERAN: Aaron, if you -- will you  
11 instruct him to answer? If not, we'll have  
12 to -- we'll preserve objection on this.

13 MR. CRAIG: Can you preserve an objection  
14 on this because it'll be interesting as to how you  
15 describe this to the court, and I will have  
16 objections.

17 MR. FINNERAN: I understand.

18 BY MR. FINNERAN:

19 Q. So I just want to be clear, Mr. Farley,  
20 are you refusing to answer any questions about the  
21 source code I put in front of you on the basis of  
22 your nondisclosure agreement with Banilla?

23 A. In part of because of it, yes.

24 Q. What is the other reason?

25 A. I don't think it was ethically obtained,

1 do you know how Stacy Friedman even got to this  
2 screen?

3 MR. FINNERAN: I have a basic  
4 understanding, but not with the level of depth that  
5 I'm sure that either Mr. Farley or Mr. Friedman  
6 would have.

7 MR. CRAIG: Okay. I mean, therein lies  
8 the rub; right?

9 MR. FINNERAN: I understand.

10 MR. CRAIG: Okay. All right. Ask him  
11 your question.

12 BY MR. FINNERAN:

13 Q. I am -- I will ask you the question.

14 Do you understand what the declare  
15 function does in the code that you're looking at in  
16 Farley 18?

17 A. I am not at liberty to discuss that as  
18 you've portrayed this as Banilla's source code.

19 Q. Okay. So am I understanding that to the  
20 extent that I ask you questions about Exhibit 18 and  
21 what is contained in Exhibit 18, you believe you  
22 cannot answer those questions without violating your  
23 confidentiality agreement with Banilla and therefore  
24 will not answer those questions?

25 A. Correct. And I may have already violated

1 it in 14 through 17; so I'm going to request that if  
2 you want me to discuss source code for Banilla, that  
3 you get me a court order and that you get me  
4 authentic source code from Banilla.

5 Q. Okay. And so with respect to 14 through  
6 17, if I ask you a question about the text on 14  
7 through 17 at this point, will you give me the same  
8 answer?

9 A. Yes, I will.

10 Q. Okay. Thank you. I respect that.

11 A. Thank you.

12 Q. All right. Okay. We talked earlier  
13 about how you're not an attorney.

14 A. Correct.

15 Q. And so you are not purporting to issue  
16 any opinion about the legal -- the meaning of any  
17 statute in Missouri.

18 Is that fair to say?

19 A. I wouldn't be giving any legal opinion  
20 unless the court asked me to.

21 Q. Right. That said, in the course of doing  
22 your work, do you typically review any relevant  
23 regulations or statutes in the course of doing your  
24 work?

25 A. Yes.

1 MR. CRAIG: Object to form.

2 THE WITNESS: Yes, we review relevant  
3 statutes and regulations in the course of our  
4 everyday work.

5 BY MR. FINNERAN:

6 Q. Do you also review any case law or  
7 guidance from regulatory agencies?

8 MR. CRAIG: Object to form.

9 THE WITNESS: Regulatory agencies rarely,  
10 if ever, provide us with case law.

11 BY MR. FINNERAN:

12 Q. Oh, sorry. My question was confusing.  
13 Do you ever review any case law?

14 A. If it's provided for me to review, I'll  
15 review it.

16 Q. Okay. What about guidance from  
17 regulatory agencies, would you typically review that  
18 in the course of doing any review or analysis?

19 A. Every day.

20 Q. Okay. In the course of your work in this  
21 case, did you review any of the Missouri statutes  
22 that define the terms "gambling" and "gambling  
23 devices"?

24 A. I believe I was provided a deposition. I  
25 don't recall if it was this case or the Cole County

1 case.

2 Q. Okay.

3 THE REPORTER: I'm sorry. Cole?

4 THE WITNESS: Cole, Cole County, C-O-L-E.

5 BY MR. FINNERAN:

6 Q. Are you familiar with -- whether it was  
7 here in the Cole County case, are you familiar with  
8 Missouri laws relating to gambling and gambling  
9 devices?

10 A. If you've got something that you want me  
11 to look at to refresh my memory, that would be  
12 wonderful.

13 Q. Fantastic. I will do just that.

14 MR. FINNERAN: Farley --

15 THE REPORTER: 19.

16 MR. FINNERAN: -- 19.

17 Here you go, Aaron.

18 THE WITNESS: That's yours.

19 MR. FINNERAN: I'll figure that out --

20 THE WITNESS: Keep them all with the  
21 exhibits over there.

22 Thank you.

23 (Farley Exhibit 19 marked.)

24 BY MR. FINNERAN:

25 Q. So I've handed you a copy of Missouri

1 Revised Statute 572.010, chapter definitions. Is  
2 this a section of the statute that you recall  
3 reviewing previously?

4 A. I think I've seen it.

5 Q. And -- and have you familiarized yourself  
6 with it in the course of this case?

7 A. I don't recall that. I saw some  
8 preliminary proposed legislation to changes for  
9 this --

10 Q. Uh-huh.

11 A. -- but I really focused on the edits and  
12 changes.

13 Q. Okay. And I recall you actually attached  
14 those bills as exhibits to your report; is that  
15 correct?

16 A. Yes, uh-huh.

17 Q. But you don't have a specific -- well,  
18 strike that.

19 So I'm going to just go through a few of  
20 these definitions with you real quick.

21 A. Sure.

22 Q. So the first is Number 3. Do you see  
23 where it says a "Contest of Chance."

24 A. Yes.

25 Q. And so it says, "Any contest, game,

1 gaming scheme, or gaming device in which the outcome  
2 depends in a material degree upon an element of  
3 chance, notwithstanding that the skill of the  
4 contestants may also be a factor therein."

5 So, first, did I read that correctly?

6 A. Yes.

7 Q. Second, you've used the term "chance" in  
8 the course of your reports. Is your use of that  
9 term consistent with the definition here in the  
10 Missouri statute, or do you think there's any  
11 difference?

12 A. Well, the definition of "contest of  
13 chance" includes the word "chance"; so --

14 Q. Well, that's true.

15 A. -- it becomes a little confusing --

16 Q. Fair enough.

17 A. -- and ambiguous.

18 Q. Fair enough. That's -- that's fair.

19 Let's then turn to -- to the word  
20 "gambling," which is the next section.

21 A. Sure.

22 Q. It says, "a person engages in gambling  
23 when he or she stakes or risks something of value  
24 upon the outcome of a contest of chance or a future  
25 contingent event not under his or her control or



1 influence upon an agreement or understanding that he  
2 or she will receive something of value in the event  
3 of a certain outcome."

4 First, did I read that correctly?

5 A. Yes, you did.

6 Q. Second, does that match your  
7 understanding of how you would use the word  
8 "gambling" in any report or testimony you've given?

9 MR. CRAIG: Object to form.

10 THE WITNESS: There is -- there is a  
11 statement in this definition that says "future  
12 contingent event not under his or her control or  
13 influence."

14 BY MR. FINNERAN:

15 Q. Yes.

16 A. And I don't know what "contingent" means  
17 in that context.

18 Q. Okay. Fair enough.

19 I think you testified earlier that in  
20 your experience, gambling or gambling devices,  
21 gambling games, involve three elements, those being  
22 prize, consideration, and chance?

23 A. Correct.

24 Q. Is it fair to say that your testimony and  
25 opinions in this case all are based upon the notion

1 that those three things are essential elements of a  
2 device being a gambling device?

3 A. Yes.

4 Q. So as you just saw here, Missouri  
5 actually has a broader definition that includes not  
6 only a contest of chance, but also a future  
7 contingent event not under the player's control or  
8 influence?

9 MR. CRAIG: Object to form. Misstates  
10 the law, and it's your opinion that it's broader.  
11 BY MR. FINNERAN:

12 Q. Okay. As we just discussed, the words  
13 "future contingent event not under his or her  
14 control or influence" are in the Missouri statute.  
15 You see them; correct?

16 A. Yes.

17 Q. Have you rendered any opinion in this  
18 case as to whether or not the Torch devices involve  
19 a future contingent event not under his or her  
20 control or influence?

21 A. I'm unclear as to what is meant by  
22 "contingent," and I don't want to make assumptions  
23 because it is a legal term here.

24 Q. Fair enough.

25 So is it fair to say you then have not

1 rendered an opinion as to whether or not that  
2 element is satisfied for any of the Torch devices?

3 A. I -- I -- I don't think that it violates  
4 that because, I mean, if you take "contingent" out  
5 of that, I think that it doesn't violate any of  
6 that. But I don't know why "contingent" is in  
7 there. I mean, I have thoughts of what "contingent"  
8 means, but I'm -- I'm not going to even venture to  
9 go out -- go there because it's a legal term.

10 Q. Okay. So my question was have you -- so  
11 am I understanding your answer correctly that you  
12 have not then formulated an opinion as to whether  
13 the Torch devices involve a future contingent event  
14 not under the control or influence of a player?

15 A. I have no opinion on that at this point.

16 Q. Okay. Can I turn you to page 5. Not  
17 page 5. Excuse me. Number 5.

18 A. Gambling device.

19 Q. Yes.

20 A. Sure.

21 Q. So I'll just read this into the record.  
22 Gambling device says, "Any device, machine,  
23 paraphernalia, or equipment that is used or usable  
24 in the playing phases of any gambling activity,  
25 whether that activity consists of gambling between

1 then.

2 A. All right.

3 Q. All right. I suspect I know your answer,  
4 but is there any way that an operator, through the  
5 operator settings on any of the Torch devices, could  
6 change those settings in such a way that the game  
7 would involve an element of chance?

8 A. No, there's no way to do that.

9 Q. As we discussed before, the prize viewer  
10 feature is a key component in your view of why you  
11 believe these devices do not involve an element of  
12 chance?

13 A. Yes. It's also the key component in why  
14 this is a no-chance game and the whole design behind  
15 the NCG series.

16 Q. If we were to walk down the street to a  
17 casino here in Las Vegas -- I probably don't need to  
18 go to a casino. I think I could walk -- walk even  
19 less farther than that -- and we were to find what  
20 we would all agree is a slot machine game, and that  
21 machine were to simply have incorporated into the  
22 software a prize viewer feature, in your view, would  
23 that also be sufficient to make that device not a  
24 game of chance?

25 MR. CRAIG: Object to form. Calls for

1 pool?

2 A. That wasn't clear.

3 Q. Okay. My question, though, is, is how  
4 does the programmer, who you say at Banilla would  
5 set this to your understanding, how does that  
6 programmer decide at which entry point to set each  
7 of the different games of play levels?

8 A. I don't know.

9 Q. Okay. Do you believe it to be a random  
10 selection?

11 A. I -- I don't know.

12 Q. Okay. We also talked about the -- the  
13 lists themselves --

14 A. Sure.

15 Q. -- of predetermined sequential outcomes.  
16 Do you know how those lists are generated?

17 A. Again, recalling testimony from  
18 Kevin Morse's deposition, I believe he said that  
19 they -- there was a group at Banilla, including the  
20 vice president of software development, that -- that  
21 built -- that built the pool manually and put it in  
22 sequence.

23 Q. Okay. And so when you say "manually," do  
24 you mean that the sequencing of the pool was done  
25 without any computer assistance?

1           A.     It may have been put into a computer, but  
2     it was done -- you know, they started out on paper  
3     and then put it into a computer.

4           Q.     So it's your understanding and belief  
5     that a human being for each of 100,000 outcomes in  
6     each of these pools, or 75,000 as the case might be,  
7     manually selected each one of those outcomes to  
8     create these sequential lists?

9           A.     That's my --

10           MR. CRAIG: Object -- object to form.  
11     Don't speculate. You can answer.

12           THE WITNESS: My understanding is that,  
13     yes, a human being put together all 60,000, 75,000,  
14     100,000, whatever it was.

15     BY MR. FINNERAN:

16           Q.     Okay. So the devices you've reviewed  
17     were five different exemplar devices that were sent  
18     to you by Torch; is that correct?

19           A.     No. Banilla provided us with the  
20     software to install in the cabinet in our -- at our  
21     lab.

22           Q.     Thank you.

23           The software you received was received on  
24     a hard drive --

25           A.     Yes.

1 Q. -- for each of the devices?

2 A. Yes.

3 Q. Okay. Are you able to indicate whether  
4 any of those devices were actually played at a  
5 location in the state of Missouri?

6 A. Am I able to?

7 Q. Yeah. Do you know?

8 A. I don't know. I don't know, but am I  
9 able to verify if what's in operation is the same?  
10 That's why we put together Appendix B.

11 Q. Right. So, in other words, you have not  
12 independently confirmed at this point that any  
13 particular device at any location in Missouri does  
14 match what's in Appendix B to your reports that are  
15 Exhibits A, B, C, D, or E to your main report.

16 You've not validated that at this point;  
17 is that correct?

18 A. That's correct.

19 Q. But it is your belief that by preparing  
20 Appendix B, it's capable to be -- it's possible for  
21 a person then to validate that the machine you  
22 reviewed is operationally equivalent to any machine  
23 that might be in any store in Missouri?

24 A. Yes.

25 Q. We talked earlier about the kinds of

REPORTER'S CERTIFICATE

STATE OF NEVADA           )  
  ) ss  
COUNTY OF CLARK         )

I, Suzanne M. Stone, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify:

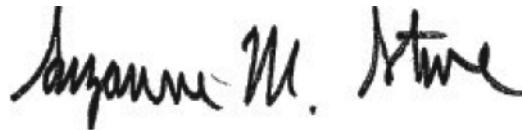
That I reported the taking of the deposition of the witness, NICOLA FARLEY, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate record of testimony provided by the witness at said time to the best of my ability.

I further certify (1) that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to FRCP 30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 18th day of Dec



Suzanne M. Stone, CCR 970, RPR